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Calendar No. 614

97TH CONGRESS, 2d Session } SENATE { REPORT No. 97-431

COMPLETED

ADJUSTING THE RATE OF INTEREST PAID ON FUNDS OF THE PERMANENT COMMITTEE FOR THE OLIVER WENDELL HOLMES DEVISE ON DEPOSIT WITH THE TREASURY OF THE UNITED STATES

MAY 26 (legislative day, MAY 25), 1982.—Ordered to be printed

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Mr. MATHIAS, from the Committee on Rules and Administration, submitted the following

REPORT

[To accompany S. 2582]

The Committee on Rules and Administration, having considered an original bill (S. 2582) to provide for adjusting the amount of interest paid on funds deposited with the Treasury of the United States by the Permanent Committee for the Oliver Wendell Holmes Devise, and for other purposes, reports favorably thereon and recommends that the bill do pass.

PURPOSE

The bill would amend the act of August 5, 1955, entitled "An Act to establish a Permanent Committee for the Oliver Wendell Holmes Devise, and for other purposes" (69 Stat. 533). The bill would adjust the rate of interest paid on the funds of the committee which are on loan to the Treasury of the United States from 3.5 percent per year to the current average yield on outstanding marketable securities of the United States. The bill would also authorize the committee to receive royalties or other income which is generated by its publications or which otherwise becomes available to the committee.

BACKGROUND

Mr. Justice Holmes died on March 6, 1935. A large portion of his estate was left to the U.S. Government. Pursuant to a suggestion made by the President of the United States in a message to the Congress, a committee was appointed to make recommendations concerning the disposition of the Holmes fund. Out of this committee grew the present Permanent Committee for the Oliver Wendell Holmes Devise,

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with the enactment during the 84th Congress in 1955 of H.R. 7029. This act provided for both the retroactive and future payment of interest to the Holmes Devise fund at 3.5 percent per year. At the time of passage, this was a preferential rate of interest on long-term securities.

Since 1955, interest rates have risen significantly, and a yield of 3.5 percent per year is clearly inequitable. The new authorized rate would be determined by prevailing market interest rates on marketable Government securities. Large funds on deposit with the Treasury, such as the railroad retirement fund and the U.S. Soldiers' and Airmen's Home permanent fund, have received market interest rates for some years. During the 94th Congress, the Committee on Rules and Administration began to move toward the standardization of funds similar to the Holmes bequest when it granted the Library of Congress and the National Gallery of Art market interest rates on their funds at the Treasury. At the same time as the committee favorably reported this bill, it favorably reported a bill granting market interest rates to the Smithsonian Institution for the original Smithson bequest funds, which had been receiving 6 percent per year. The Treasury Department has no objection to these interest rate adjustments.

The enactment of this bill would allow the Permanent Committee for the Holmes Devise to use the "market-based special obligation" investment procedure of the Treasury Department. The market-based special obligation is a special nonmarketable Treasury issue which is identical (except for transferability) to any marketable Treasury issue. The special security is issued at the mean of the New York Federal Reserve Bank's composite of quoted bid and ask prices, at noon on the day the account pays for the security. Thus, the investing fund is assured of obtaining a market interest rate on its investment without actually entering the market. At present, according to the Treasury, over 80 percent of the Government accounts for which Treasury provides investment services are invested in market-based special obligations.

The Holmes Devise currently provides for a lecture series and a publication program, of which the most notable aspect is the multivolume history of the Supreme Court of the United States. The MacMillan Co. has undertaken the publication of the history of the Supreme Court, and royalties have begun to accrue. The original act provides for the acceptance of gifts to the Holmes Devise, but is ambiguous regarding royalties or income, which seem not to have been anticipated. This bill would allow the Holmes Devise to receive such income.

COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 24, 1982.

Hon. CHARLES MCC. MATHIAS, JR.,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed a bill to amend the act establishing a Permanent Committee for the Oli-

ver Wendell Holmes Devise, as ordered reported by the Senate Committee on Rules and Administration, on May 21, 1982.

This bill adjusts the rate of interest paid on the $88,000 presently in the Holmes Devise from the Treasury. The act establishing the Oliver Wendell Holmes Devise specified an interest rate of 3.5 percent per annum on the fund. The interest rate authorized in this bill is based on current market yields on outstanding U.S. marketable obligations. Under this bill, the adjusted interest rate would increase payments to the Holmes Devise from the Treasury by about $7,000 to $9,000 annually.

This bill also clarifies the original act by authorizing the Holmes Devise Fund to receive royalties from publications authorized in the original statute. Currently, the fund is receiving royalties from works published and sold under the act. This provision would clarify the current practice.

Sincerely,

RAYMOND C. SCHEPPACH,
(For Alice M. Rivlin, Director).

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Rules and Administration does not consider that the enactment of this bill would have any regulatory impact.

COMMUNICATIONS

THE LIBRARIAN OF CONGRESS,
Washington, D.C., April 19, 1982.

Hon. CHARLES MCC. MATHIAS, JR.,
Chairman, Committee on Rules and Administration,
Washington, D.C.

DEAR MR. CHAIRMAN: Since 1955, the Library of Congress has administered the Permanent Committee for the Oliver Wendell Holmes Devise. This Committee was established by the Congress with funds left to the United States by the estate of Justice Oliver Wendell Holmes. The purpose of the Devise was to provide for a definitive history of the United States Supreme Court and to provide for a lecture series on the Court. At the time Congress enacted legislation to establish the Devise, provision was made for the funds to be deposited in the U.S. Treasury at a rate of interest of 3½ per centum which at that time was a fair rate of interest. Needless to say, interest rates have risen substantially.

Provision was made by the Devise for the publication of the multivolume history by the Macmillan Company and a contract was entered into. To date, four volumes have been published and the Devise was recently credited with royalties by the Company. A review by the Library's General Counsel of the Act establishing the Fund has raised some questions as to the authority of the Fund to receive such income.

I am, therefore, enclosing draft legislation to increase the amount of interest paid to the Fund by the U.S. Government to allow a rate of interest equal to that for funds deposited with the Treasury by the Library of Congress Trust Fund Board. An explanation for the legis-

lation is also enclosed. The legislation would also clarify the authority of the Fund to receive royalties or other income paid to it.

I would appreciate it if this legislation could be enacted in order that we can credit the fund with royalties received from the Macmillan Company and begin to realize a fair interest rate on the funds now deposited in the Treasury. The funds could be expended to further the purposes identified in the Holmes bequest and the authorizing legislation.

Sincerely yours,

DANIEL J. BOORSTIN,
The Librarian of Congress.

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C., April 20, 1982.

Hon. DANIEL J. BOORSTIN,
The Librarian of Congress, Library of Congress,
Washington, D.C.

DEAR DR. BOORSTIN: This is in response to your letter of April 19, 1982, in which you request consideration by the Committee on Rules and Administration of two proposed amendments to the law establishing the Permanent Committee for the Oliver Wendell Holmes Devise. The first of these amendments would change the rate of interest on Devise funds, deposited with the United States Treasury from a statutorily defined 3½ per centum per annum to a rate "which is the higher of the rate of 3½ per centum per annum or a rate which is 0.25 percentage points less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding long-term marketable obligations of the United States, adjusted to the nearest one-eighth of 1 per centum".

Measures with similar provisions were enacted during the 94th Congress for the other gift and trust funds of the Library of Congress and those of the National Gallery of Art. Your second proposed amendment would resolve any questions concerning the authority of the Holmes Devise Fund to receive royalties from the publication of the multi-volume history of the United States Supreme Court and other publications authorized in the original statute.

As you know, the Rules Committee has before it S. 2391, a bill which would provide a comparable benefit to the rate of return received by the Smithsonian Institution from the original James Smithson bequest which is permanently deposited with the U.S. Treasury. We plan to meet and mark-up this and other measures on May 13, 1982, (if not earlier) and will include your proposed amendments at the same time.

Sincerely,

CHARLES MCC. MATHIAS, JR., *Chairman.*

CHANGES IN EXISTING LAW

In accordance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2582, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

AN ACT To establish a Permanent Committee for the Oliver Wendell Holmes Devise, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established in the Treasury of the United States a fund to be known as the "Oliver Wendell Holmes Devise Fund" (hereinafter referred to as the fund). There is hereby appropriated to the fund out of any money in the Treasury not otherwise appropriated: (1) an amount equal to the sum credited to the account in the Treasury entitled, "Donations to the United States, Bequest of Oliver Wendell Holmes"; (2) an amount equal to interest on the amount referred to in (1) from the date of deposit in the Treasury to the end of the fiscal year prior to the date of the enactment of this Act, compounded semiannually, calculated at a rate to be determined by the Secretary of the Treasury by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month preceding the deposit on all outstanding marketable obligations of the United States having a maturity date of fifteen or more years from the first day of such month; and [(3) an amount, at the end of each fiscal year after the date of the enactment of this Act, equal to the interest calculated on the average daily balances in the fund during the fiscal year at a rate of 3½ per centum per annum.] *(3) amounts equal to the interest earned on moneys in the fund which are invested in public debt securities pursuant to the succeeding sentence. Moneys in the fund shall be invested by the Secretary of the Treasury in public debt securities in accordance with specifications, as to maturity of security and amount to be invested, prescribed the Permanent Committee for the Oliver Wendell Holmes Devise.*

SEC. 2. There is hereby established the Permanent Committee for the Oliver Wendell Holmes Devise (hereinafter referred to as the Committee), to be composed of five members, one of whom shall be the Librarian of Congress, ex officio, who shall act as Chairman. The other four members shall be appointed by the President from four panels of three names each, one such panel to be submitted to him by each of the following: The Association of American Law Schools, The American Philosophical Society, The American Historical Association, and The Association of American Universities. The members shall serve eight-year terms, except that the initial appointees shall have terms of eight, six, four, and two years, respectively. Every appointment to fill a vacancy occurring whether by death, resignation, or expiration of a term shall be made in the same manner as the original appointments from such four panels submitted on each such occasion. No appointee may serve more than one term.

SEC. 3. The members of the Committee shall serve without compensation, but may be reimbursed for expenses incurred by them in carrying out the duties of the Committee or in the alternative they may receive their transportation and not to exceed $20 per diem in lieu of subsistence.

SEC. 4. The Committee shall devote the income and, to the extent the Committee deems it necessary and desirable, the principal of the fund to the first, and, in the discretion of the Committee, to the second and third, of the following objects:

(a) To employ one or more scholars of distinction (with any appropriate assistants) to prepare a history of the Supreme Court of the United States, to defray the appropriate expenses of such scholars and assistants, and to finance the publication of such history. The Committee may select a single scholar to carry the work to completion. or a number or succession of scholars to complete it; may make any necessary employment contracts with such scholars and assistants of such terms and length as it determines; and shall have general supervision of the preparation of the history of the Supreme Court, including discretion to adopt from time to time such arrangements as lend themselves best to the advancement of the preparation of such history and to the employment of distinguished scholars qualified to achieve the desired standards and independence in the work which they undertake.

(b) To finance an annual lecture or series of lectures, at times and places determined by the Committee, to be given each year at a different institution of higher learning in various parts of the country by a lecturer of distinction engaged by the Committee on a subject of his choice. The lectures shall be known as the Oliver Wendell Holmes Lectures.

(c) To finance the preparation and publication of the memorial volume contemplated by section 2 of the Act of October 22, 1940 (54 Stat. 1206) containing Justice Holmes' writings and other material.

SEC. 5. The Committee is authorized to accept, receive, hold, and administer such gifts or bequests of money, securities, or other personal property as may be approved by the Committee, and it may sell or otherwise dispose of such securities or other personal property. *The Committee is further authorized to receive royalties or other income that is generated by the sale of its publications or which otherwise becomes payable to the fund.* All moneys received shall be paid into, administered, and expended as a part of the fund.

SEC. 6. The Committee may employ, without regard to the civil-service laws or the Classification Act of 1949, such employees as may be necessary in carrying out its functions.

SEC. 7. The Committee may accept and utilize services of voluntary and uncompensated personnel and pay any such personnel when engaged in the work of the Committee necessary travel and subsistence expenses or in the alternative, transportation and not to exceed $20 per diem in lieu of subsistence; cooperate with legal, philosophical, and historical societies and institutions of learning; and call upon Federal agencies for their advice and assistance in carrying out its functions. Any Federal agency furnishing advice or assistance to the Committee may expend its own funds for this purpose, with or without reimbursement from the Committee as may be agreed upon by the Committee and the agency. The Committee, to such extent as it finds to be necessary, may, without regard to the laws or procedures applicable to Federal agencies, procure transportation, supplies, services and property, and make contracts, and may exercise those powers that are necessary to enable it to carry out efficiently and in the public interest the purposes of this Act.

SEC. 8. The Chairman, with the approval of the Committee, is authorized to determine the character and necessity of expenditures from the fund and the manner in which such expenditures are incurred, allowed and paid. Disbursements from the fund shall be made through the disbursing facilities of the Treasury Department.

SEC. 9. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency.

Approved August 5, 1955.

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